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W.P.No.3291 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2024

PRONOUNCED ON : 25.03.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.3291 of 2024

N.Vasudevan

... Petitioner

Vs.

The Registrar General,
The High Court of Judicature at Madras,
High Court,
Chennai – 600 104.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling upon the records of the respondent pertaining to the Office Memorandum in R.O.C.No.98240/2023/B/Spl.Cell, dated 12.12.2023 and quash the same and to consequently to direct the respondent hold that the petitioner is entitled for notional promotion to the post of Civil Judge (Senior Division) with effect from 15.09.2015 and grant all consequential benefits flowing therefrom, including the back wages, etc., and give effect to the judgment of this Court in W.P.No.20449 of 2015.



For Petitioner : Mr.V.Prakash
Senior Counsel
For Mr.Swarnam J.Rajagopalan

For Respondent : Mr.N.K.Kanthimathi

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The writ petition has been instituted challenging the Office Memorandum issued by the respondent in proceeding dated 12.12.2023.

2. The petitioner joined as Civil Judge (Junior Division) on 11.03.2009. Challenging the fixation of seniority in terms of merit ranking, the petitioner filed W.P.No.20449 of 2015 and the High Court along with the other writ petition passed final orders allowing the writ petition as follows:

“41. Accordingly, W.P.Nos.20449, 20451 and 20452 of 2015 are disposed of with the following directions:

(i) The revised seniority lists as prepared in accordance with the marks obtained by the



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candidates recruited to the post of Civil Judge (Junior Division) would prevail irrespective of the order in which they may have been shown by the Public Service Commission or their roster positions. If two or more appointees obtain identical marks, the older or oldest in age, as the case may be, will occupy the higher or highest position between such candidates in the seniority list.

(ii) The above direction will apply only to appointees recruited to the post of Civil Judge (Junior Division) 2009 onwards.

(iii) It is needless to say that the dates of appointment are of crucial importance when preparing the seniority list, but when a common recruitment process is undertaken, all new recruits must be deemed to have been appointed on the same date and their order of seniority will be in accordance with the marks obtained in the recruitment examination, irrespective of the date of joining and regardless of the positions they occupied as per the roster.



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(iv) The promotions obtained till today by candidates who have been recruited as Civil Judge (Junior Division) in or after the year 2009 will remain unaffected by this order, in the sense that no one already promoted should be demoted to a lower post.

(v) Even if the revision results in a higher ranked officer remaining in a lower post than a lower ranked <https://hcservices.ecourts.gov.in/hcservices/> officer, promotion will be on the basis of the prospective vacancy in the promotional post.

(vi) For Civil Judges (Senior Division) who may be eligible to take the limited competitive examination in future, all judges ranked higher than the last placed Civil Judge (Senior Division) who is entitled to take the examination on the basis of the time spent in the post, will be eligible irrespective of not having spent the requisite time in the post.

(vii) As far as the 2020 recruitment process is concerned, since the appointments have not yet



Rule 17 (a) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules, 2016. A charge memo was issued. The petitioner submitted his explanation.

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Writ Petition in W.P.No.17326 of 2017 was filed by the petitioner, challenging the disciplinary proceedings was dismissed by an order dated 10.07.2017. Thereafter, the Disciplinary Authority imposed punishment of withholding of increment for a period of one year without cumulative effect in proceedings dated 01.04.2016.

5. The Judicial Officers from S.No.1 to 26 in the pre-revised seniority list as per the order of the roster list was promoted on 15.09.2015. Seniority was revised on 08.09.2023. The petitioner has stated that promotion to the juniors were granted even before initiation of charge memo on 31.12.2015. Thus, the petitioner ought to have been promoted on 15.09.2015 as his merit ranking is S.No.16. As on 15.09.2015, the petitioner was in S.No.29. Thus, no junior was promoted.

6. Mr.V.Prakash, learned Senior Counsel appearing on behalf of the petitioner would mainly contend that even during the currency of punishment the juniors to the petitioner were promoted. The petitioner suffered the



punishment of withholding of increment for a period of one year without cumulative effect. Further, his promotion to the post of Civil Judge (Senior Division) was deferred. Subsequently, the petitioner was promoted as Civil Judge (Senior Division) with effect from 01.04.2022.

7. Under these circumstances, the petitioner is restricting his prayer in the present writ petition only for restoration of his seniority in the post of Civil Judge, (Junior Division) and Senior Division. In the event of not restoring the seniority of the petitioner in his original position, his further promotion to the post of District Judge (Entry Level) will get affected. Therefore, the petitioner cannot be punished repeatedly on account of one punishment.

8. Mr.V.Prakash, learned Senior Counsel appearing on behalf of the petitioner states that the petitioner has not pressed his claim for retrospective promotion from the date on which his juniors were promoted to the post of Civil Judge (Senior Division) in the year 2017. The name of the petitioner was deferred on earlier occasion on account of punishment, which became final. He was promoted to the post of Civil Judge (Senior Division) on 04.01.2022.



Therefore, the seniority of the petitioner should be restored in the original position in the cadre of Civil Judge (Junior Division) for the purpose of considering his name for further promotion to the next level to the post of District Judge (Entry Level).

9. Mrs.N.K.Kanthimathi, learned counsel for the respondent would strenuously oppose the contentions raised on behalf of the petitioner by stating that at the time of appointment of the petitioner his seniority as per roster was fixed at S.No.29. Subsequently, it was revised and placed in S.No.16.

10. During the year 2015, 115 Civil Judges (Junior Division) were granted promotion to the post of Civil Judge (Senior Division). The Civil Judge (Junior Division) recruited in the year 2009 were also promoted. The Judicial Officer, who was in S.No.28 i.e., immediately above the petitioner, even though had reached the zone of consideration was not promoted as there was no vacancy. Therefore, the petitioner could not be considered for promotion during the year 2015. The petitioner's immediate senior was promoted as Civil Judge (Senior Division) on 10.05.2017.



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11. The petitioner's seniority was originally placed in S.No.29. The revised seniority was published in G.O.(D).No.1063, dated 08.09.2023. As per the revised seniority, the petitioner's seniority was re-fixed in the 16th place. Since the revised seniority was published in the year 2023, the petitioner has not ripened for promotion in the year 2019. However, promotions were granted from S.No.1 to 27 in the year 2015. Thereafter, the petitioner suffered punishment. Even the turn for the petitioner did not come in the year 2015, since he was placed in the S.No.29. Thus, the claim of the writ petitioner to grant retrospective promotion from the year 2015 is unsustainable.

12. Admittedly, the petitioner suffered punishment of withholding of increment for a period of one year without cumulative effect in the Departmental Disciplinary Proceedings. The currency of punishment and the cheque period as per rules came to an end on 31.03.2021. On expiry of currency and cheque period, the petitioner was directed to submit his credentials for considering his name for promotion and accordingly, he was promoted as Civil Judge (Senior Division) by proceedings dated 04.01.2022.



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13. The petitioner's immediate senior was promoted as Civil Judge (Senior Division) on 10.05.2017 and the name of the petitioner was deferred in the year 2017 till 2021, in view of the Schedule XI – Part A II, Rule 11 of the Tamil Nadu Government Servants (Condition of Service) Act, 2016. Thereafter, his name was considered and promoted to the post of Civil Judge (Senior Division) with effect from 04.01.2022.

14. The issue mainly raised by Mr.V.Prakash, learned Senior Counsel appearing on behalf of the petitioner is that the revised seniority of the petitioner is to be restored by placing him in S.No.16 in the cadre of Civil Judge (Junior Division) and consequently, his seniority is to be restored in the promotional post of Civil Judge (Senior Division). In other words, despite the fact that the petitioner was not promoted to the post of Civil Judge (Senior Division) along with his juniors and promoted to the said post on 04.01.2022, his seniority should be restored by placing his name above the Judicial Officers, who were promoted as Civil Judge (Senior Division) in the year 2017. The petitioner claims restoration of the seniority with retrospective effect.



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15. Pertinently, the petitioner had not served in the post of Civil Judge (Senior Division) from the year 2017. His name was deferred from the year 2017 till 2021. He was actually promoted as Civil Judge (Senior Division) on 04.01.2022.

16. That being the factum, question arises, whether retrospective seniority can be granted despite the fact that the petitioner had not served in the post of Civil Judge (Senior Division). Further, non-restoration of seniority with retrospective effect would amounts to double punishment on the Judicial Officer or not is a consequential question arises.

17. The main purpose of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is to regulate the service conditions of Government servants. It covers a wide range of matters regarding their employment, including recruitment, promotions, seniority, terms and conditions of service, disciplinary actions, retirement benefits, and some others.



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18. The term appointment into service has been defined under Section 3(b) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 reads as follows:

“(b) “appointed to a service” means when a person appointed in accordance with this Act or in accordance with the rules applicable at the time, as the case may be, discharges, for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof.”

19. Section 40 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, that governs seniority in service as per the rule of reservation and the order of rotation and reads as follows:

*“(1) The seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined in the order of his placement in the list prepared by the recruitment agency or appointing authority, as the case may be, in accordance with the **rule of reservation** and the order of rotation specified in Schedule-V, where it applies. The date of commencement of his probation shall be the*



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date on which he joins duty irrespective of his seniority.

(2) The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date on which he is appointed to the services, class, category or grade”.

Provided that where the junior appointed by a particular method of recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointed by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class, category or grade on the same day on which the junior was so appointed.

Provided further that the benefit of the above proviso shall be available to the senior only for the purpose of fixing inter-se-seniority:



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Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age.

(3) The transfer of a person from one class or category of a service to another class or category carrying the same scale of pay or pay band shall not be treated as first appointment to the latter for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred; where any difficulty or doubt arises in applying this provision, seniority shall be determined by the appointing authority.

(4) Where a member of any service, class, category or grade is reduced to a lower service, class, category or grade he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall take rank in such lower service, class, category or grade, next below



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any specified member thereof.

(6) Application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.”

20. In view of the definition of appointment into service, the seniority of a person is to be fixed from the date on which he joined in the services. In the present case, the petitioner has restricted his prayer in the present writ petition by stating that he has given up his relief for retrospective promotion on par with his juniors on account of the fact that the punishment became final. However, he seeks restoration of seniority alone.

21. Seniority list is prepared for considering the employees for



promotion to the higher post. Fixing of seniority is for consideration of names in the panel for promotion. However, such seniority lists are prepared based on the date of appointment / date of promotion. Seniority indicates the length of services rendered by an employee in a particular post / cadre.

22. Rule 8 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 defines Seniority and reads as under:

“(1) The seniority of a person appointed to the category of District Judge (Entry Level) shall be with reference to the date of appointment to the said Service.

(2) The seniority of a person appointed to the category of District Judge (Selection Grade)/District Judge (Supertime Scale) shall be determined by the date of first appointment to that category.

Provided that where the date of the first appointment of two or more District Judge to the category of the District Judge (Selection Grade)/District Judge (Supertime Scale) is the same, the inter-se seniority shall be determined by



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the rank assigned to them in the list drawn by the High Court.

Provided further that the seniority of a person appointed to the category of District Judge by promotion from among the qualified persons belonging to the categories 4,5 or 6 as the case may be shall be fixed by the High Court.

(3) The seniority of a person appointed to the category of Senior Civil Judge shall be determined by the rank assigned in the list drawn by the High Court.

(4) The seniority of a person appointed to the category of Civil Judge shall be determined by the rank assigned to him / her in the list drawn by the Tamil Nadu Public Service Commission.”

23. Seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant Service Rules. It is so because, seniority cannot be given on retrospective basis, when an employee has not even been borne in the cadre



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and be doing so, it may adversely affect the employees, who have been appointed validly in the mean time. In the event of granting retrospective promotion, question of restoration of seniority would arise, but not otherwise.

24. In the present case, the juniors to the petitioners were promoted as Civil Judge (Senior Division) in the year 2017. The name of the petitioner was deferred on account of currency of punishment and cheque period. He was actually promoted to the post of Civil Judge (Senior Division) on 04.01.2022. Thus, the said date alone is to be reckoned for fixing the seniority of the petitioner in the post of Civil Judge (Senior Division). Such fixation cannot be construed as double punishment. Fixation of seniority is an act of consequence to the promotion. It cannot be separated from promotion. Date of appointment / promotion will be criteria for reckoning the seniority. Therefore, question of restoration of seniority with retrospective effect would not arise at all. Fixation of seniority consequent to the promotion from the date of promotion cannot be construed as double punishment. Fixation of seniority since been consequential, the arguments in this regard lack merit consideration.



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25. Thus, we do not find any infirmity in respect of the reasoning assigned in the order impugned. Consequently, the Writ Petition stands dismissed. However, there shall be no order as to costs.

[S.M.S., J.] [K.R.S., J.]
25.03.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

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